



IRISH FUNDS
INDUSTRY
ASSOCIATION

CORPORATE GOVERNANCE CODE FOR IRISH DOMICILED COLLECTIVE INVESTMENT SCHEMES

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INTRODUCTION

1.0 Legal Basis

1.1 This Code is applicable to all Irish domiciled collective investment schemes¹ and not just those Irish authorised collective investment schemes admitted to trading on a regulated market.

1.2 While this is a corporate governance code that may be adopted on a voluntary basis by Irish authorised collective investment schemes, it should be noted that the Code reflects existing corporate governance practices imposed on Irish authorised collective investments schemes by, inter alia,

- (i) The Irish Companies Acts 1963-2009 (the “Companies Acts”); and
- (ii) The Irish Financial Services Regulatory Authority (“Financial Regulator”) in its UCITS Notices, Non-UCITS Notices and Guidance Notes.

1.3 This Code, if adopted on a voluntary basis, will enable an Irish domiciled corporate collective investment scheme with shares admitted to trading on a regulated market to refer to this Code in a specific section in the Directors’ Report of that collective investment scheme’s Annual Report and in doing so comply with the provisions of the European Communities (Directive 2006/46/EC) Regulations 2009 (“S.I. 450 of 2009”) which was signed into law on the 18th November 2009.

2.0 What is a Collective Investment Scheme

2.1 A collective investment scheme is essentially a vehicle for pooling the investments of investors in order to obtain professional management for their pooled assets. The purpose of a collective investment scheme is to successfully invest the pooled assets for the primary benefit of its investors. The shares of a collective investment scheme may at the request of the shareholders be purchased by the Company at such frequency as disclosed in the prospectus of the collective investment scheme. Alternatively, a collective investment scheme may be closed ended in that its shares may not be purchased by the Company at the request of the shareholders through out the life of the collective investment scheme.

3.0 What is Corporate Governance

3.1 IOSCO defines governance of collective investment schemes as a “framework for the organisation and operation of investment collective investment schemes that seeks to ensure that investment collective investment schemes are organised and operated efficiently and exclusively in the interests of their investors, and not in the interest of collective investment scheme insiders².”

¹ Investment Companies authorised pursuant to Part XIII of the Companies Act 1990, Unit Trusts authorised pursuant to the Unit Trusts Act 1990, Common Contractual Funds authorised pursuant to the Investment Fund, Companies & Miscellaneous Provisions Act 2005, Investment Limited Partnerships authorised pursuant to the Investment Limited Partnership Act 1994 and Investment Companies, Unit Trusts and Common Contractual Funds authorised pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 as amended

² IOSCO Publication Examination of Governance for Collective Investment Schemes, February 2007

3.2 As IOSCO notes, a framework for governance must reflect the unique nature and purpose of the collective investment scheme. It is a key aspect of any collective investment scheme that efficient disclosure requirements are maintained and accounting, valuation, reviewing and auditing standards are in place in order to make sure that the risk-performance equation of a collective investment scheme is adequately managed.

3.3 A collective investment scheme should have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and adequate internal control mechanisms, including sound administrative and accounting procedures that are consistent with and promote sound and effective risk management.

GENERAL REQUIREMENTS

1.1 The requirements in this Code are the minimum requirements that an Irish authorised collective investment scheme shall meet in the interest of promoting strong and effective governance.

1.2 Irish authorised collective investment schemes may be structured as corporate collective investment schemes or non-corporate collective investment schemes such as unit trusts, common contractual funds and investment limited partnerships.

1.3 The board of directors of an Irish authorised corporate collective investment scheme is the focal point of the governance regime for that collective investment scheme and is therefore responsible for compliance with this Code if adopted. However it is recognised that the board of directors of a corporate collective investment scheme may delegate the management of the collective investment scheme to a management company and in doing so may rely on that management company to ensure compliance with this Code by that collective investment scheme.

1.4 Non-corporate collective investment schemes are required to appoint an Irish registered company as a management company or general partner (whichever is applicable). The board of directors of that company is accountable and responsible for the performance and conduct of the applicable non-corporate collective investment scheme and for ensuring compliance with this Code if adopted.

1.5 In summary therefore, the Board³ retains primary responsibility for corporate governance within an Irish authorised collective investment scheme at all times. Senior management⁴, if any, shall operate effective oversight consistent with Board policy.

1.6 No one individual may have unfettered powers of decision.

1.7 The governance structure put in place by a Board should be sufficiently sophisticated to ensure that there is effective oversight of the activities of the collective investment scheme taking into consideration the authorisation process for an Irish domiciled collective investment scheme which has two parts, one dealing with the promoter of, and service providers to, the collective investment scheme and the second dealing with the collective investment scheme itself.

1.8 In addition to a management company (which is compulsory for a unit trust fund, common contractual fund and an investment limited partnership and optional for a corporate fund), the principal service providers to an Irish authorised collective investment scheme are the investment manager, administrator and the trustee/custodian. These entities are generally selected by the Promoter of the collective investment scheme prior to authorisation of the collective investment scheme by the Financial Regulator and therefore in many cases prior to the Board being finalised.

1.9 Promoter - Before an application for authorisation of an Irish domiciled collective investment

³ This refers to the board of directors of an Irish domiciled corporate collective investment scheme or to the board of directors of an Irish domiciled management company / general partner of a non-corporate collective investment scheme

scheme may be considered by the Financial Regulator, the latter must be satisfied as to the promoter's expertise, integrity and adequacy of financial resources.

1.10 Investment Manager - Where the asset management of an Irish domiciled collective investment scheme is, as is usual, delegated to a third party Investment Manager, the Financial Regulator imposes two principal requirements. Firstly, only investment managers, who are authorised or registered for the purpose of asset management and who are subject to prudential supervision equivalent to that under EU laws may be appointed. Secondly, where a non-EU investment manager is appointed, there must be a form of co-operation in place between the Financial Regulator and the supervisory authorities of the third country investment manager.

1.11 Administrator - Under the Irish regulatory regime, the administrator of an Irish domiciled collective investment scheme must be incorporated in Ireland and authorised by the Financial Regulator under the Investment Intermediaries Act, 1995 (as amended) or the European Communities (Markets in Financial Instruments Directive) Regulations 2007 (as amended) to provide administration services such as the calculation of the net asset value, transfer agency and registrar services and fund accounting, etc.

1.12 Custodian/ Trustee - Under the Irish regulatory regime, the custodian/trustee of an Irish domiciled collective investment scheme must be a credit institution authorised in Ireland, an Irish branch of an EU credit institution or an Irish incorporated company which is wholly owned by an EU credit institution (or equivalent from a non-EU jurisdiction) provided that the liabilities of the Irish company are guaranteed by its parent. A custodian / trustee of an Irish domiciled collective investment scheme has a dual role (i) to "oversee" the manner in which the collective investment scheme is managed and (ii) to safe-keep the assets of the collective investment scheme, in each case in accordance with the requirements set down by the Financial Regulator.

⁴ For example certain management companies have employees

BOARD OF DIRECTORS

1.0 Composition of the Board

1.1 The Board shall be of sufficient size and expertise to oversee adequately the operations of the collective investment scheme. However all Irish companies must have a minimum of two Directors.

1.2 Appointments to the office of director of a collective investment scheme require the prior approval of the Financial Regulator⁵. Any departure from the office of director must be made known to the Financial Regulator⁶ together with reasons for the departure⁷ and confirmation that the departure is not linked to issues with the collective investment scheme / management company.⁸

1.3 The Board must not have directors in common with the board of directors of the trustee/custodian of the collective investment scheme⁹.

1.4 Directors are required to disclose to their board any concurrent directorships which they hold on the boards of authorised collective investment schemes and/or related entities which supply services to such schemes¹⁰.

1.5 A minimum of two directors on the Board must have Irish residency¹¹.

1.6 Before being appointed, a new Director needs to demonstrate to the satisfaction of the Board that he or she meets the Financial Regulator's fit and proper standards. "Fitness" requires that a person appointed as a Director has the necessary qualifications, skills and experience to perform the duties of that position. "Probity" requires that a person is honest, fair and ethical.¹²

1.7 A proposed Director should be aware of the obligations and the duties of a director of a company under the Companies Acts and be aware of his / her responsibilities arising from legislation, regulations, codes of practice, guidance notes, guidelines and any other rules or directives, which are of relevance to the proposed position¹³.

1.8 A collective investment scheme shall satisfy itself that a proposed Director is in a position to fulfill his or her duties to the collective investment scheme, having regard to his/her other commitments.¹⁴ In any event, a director shall not at a particular time be a director of more than 25 Irish companies save where otherwise provided in accordance with section 45 of the Companies

⁵ UCITS Notice 2.4 Sections 7 (i) and 34(i) / Non-UCITS Notice 5.11 Sections 9 and 23

⁶ UCITS Notice 2.4 Sections 7 (ii) and 34(ii) / Non-UCITS Notice 5.11 Sections 9 and 23

⁷ Financial Regulator's Fit and Proper Requirements – December 2008

⁸ Financial Regulator requirement

⁹ UCITS Notice 2.4 Sections 7 (iii) and 34(iii) / Non-UCITS Notice 5.11 Sections 10 and 24

¹⁰ UCITS Notice 2.4 Sections 7 (v) and 34(v) / Non-UCITS Notice 5.11 Sections 11 and 25

¹¹ UCITS Notice 2.4 Sections 7 (iv) and 34(iv) / Non-UCITS Notice 5.11 Section 12

¹² Financial Regulator's Fit and Proper Requirements – December 2008

¹³ Confirmation required of proposed Director in Appendix I of Individual Questionnaire

¹⁴ Financial Regulator's Fit and Proper Requirements – December 2008

(Amendment) (No. 2) Act 1999¹⁵.

1.9 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the collective investment scheme shall declare the nature of his interest at a meeting of the Directors.¹⁶

2.0 Chairman

2.1 There shall be a Chairman appointed to the Board¹⁷.

2.2 The Chairman shall chair all Board meetings he/she physically attends.

2.3 The Chairman shall facilitate the convening of board meetings and promote effective communication between Directors.

3.0 Role of the Board

3.1 The Board of each collective investment scheme is responsible for the effective, prudent and ethical oversight of the collective investment scheme and is ultimately responsible for ensuring that risk and compliance is properly managed in the collective investment scheme.

3.2 The Board shall ensure on a continuing basis that it has sufficient management resources to conduct its business¹⁸.

3.3 The Board shall ensure that there are sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities¹⁹.

3.4 Key/strategic decisions relating to a collective investment scheme shall be considered by the Board, including, but not limited to²⁰:

- (i) creation/termination of new sub-funds and classes of shares;
- (ii) changes in investment objectives, policies and restrictions;
- (iii) temporary suspension in the calculation of net asset value;
- (iv) approval of dividends, fees and expenses of the applicant firm;
- (v) approval of financial statements of the collective investment scheme; and
- (vi) any other decisions of a strategic nature.

3.5 The Board may delegate authority to sub-committees or management to act on behalf of the

¹⁵ In determining the number of directorships a person has at a particular time, public limited companies are excluded and therefore directorships in Irish authorised corporate collective investment scheme are excluded for the purpose of this restriction. However directorships in private companies would be included and therefore such a restriction would include directorships in Irish management companies

¹⁶ Section 194 of the Companies Act 1963 as amended

¹⁷ Section 6 (b) of the Financial Regulator's Guidance Note 4/07 – UCITS / Organisation of Management Companies

¹⁸ UCITS Notice 2.4, Section 35 /Non-UCITS Notice 5.11, Sections 16 and 26

¹⁹ UCITS Notice 2.4, Sections 14 and 27 /Non-UCITS Notice 5.11, Sections 1, 8 and 26

²⁰ Section 6 (e)(i) of the Financial Regulator's Guidance Note 4/07 – UCITS / Organisation of Management Companies

Board in respect to certain matters but, where the Board does so, it shall have mechanisms in place for monitoring the exercise of delegated functions. The Board cannot abrogate its responsibility for functions delegated.

3.6 The Board should be in a position to explain its decisions to the Financial Regulator and to shareholders of the collective investment scheme.

3.7 The Directors shall strive to ensure a collective investment scheme is run in compliance with legislation, regulations, codes of practice, guidance notes, guidelines and any other rules or directives, which are of relevance to their position as directors²¹.

3.8 The Directors have certain statutory duties including, inter alia, the duty to maintain proper books of account²², duty to ensure the requirements of the Companies Act are complied with, duty to prepare annual accounts, duty to have an annual audit performed, duty to maintain certain registers and other documents, duty to file certain documents with the Registrar of Companies, duty of disclosure, duty to convene general meetings of the company, duties regarding transactions between the Directors and the company, etc.

3.9 The Directors have certain common law duties including, inter alia, the duty to act with due skill, care and diligence²³, duty to act honestly in the best interests of the company²⁴, etc.

3.10 The Board is also responsible for safeguarding the assets of the collective investment scheme and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

3.11 The Board is ultimately responsible for the valuation of the assets of the collective investment scheme²⁵. In this regard, the Board should ensure a valuation policy is in place in accordance with the Financial Regulator's requirements set out in Guidance Note 1/00.

4.0 Meetings

4.1 The Board shall meet as often as is appropriate to fulfill its responsibilities effectively and prudently, reflective of the nature, scale and complexity of the collective investment scheme.

4.2 A detailed agenda of items for consideration at each Board meeting together with minutes of the previous Board meeting, sufficient and clear supporting information and papers shall be circulated in advance of the meeting to allow all Directors adequate time to consider the material.

4.3 Detailed minutes of all Board meetings shall be prepared with all decisions, discussions and points for further actions being documented. Dissents or negative votes shall be documented in terms acceptable to the dissenting person or negative voter. The minutes of meetings shall provide sufficient detail to evidence appropriate Board attention where necessary and shall be

²¹ Confirmation required of proposed Director in Appendix I of Individual Questionnaire

²² Section 202 of the Companies Act 1990

²³ Also required by the Financial Regulator pursuant to section 1(ii) of UCITS Notice 16.1

²⁴ Also required by the Financial Regulator pursuant to section 1(i) of UCITS Notice 16.1

²⁵ Financial Regulator's Guidance Note 1/00 "Valuation of the Assets of Collective Investment Schemes"

agreed at the subsequent Board meeting.

4.4 The Board shall ensure that where conflicts of interests arise, they are noted in the minutes.

5.0 Committees of the Board

5.1 The Board may establish committees comprising one or more persons provided it has the authority to do so pursuant to the applicable constitutional documents.

5.2 Committees shall have documented terms of reference evidencing all delegated authorities given to them.

5.3 When appointing committee members, the Board shall review and satisfy itself as to the relevant expertise, skill of members and their ability to commit appropriate time to the committee.

5.4 Agendas and all relevant material for meetings shall be circulated to all committee members in a timely manner in advance of the meetings.

5.5 Detailed minutes of all committee meetings shall be prepared recording time of meeting, location held, attendees, all key decisions and discussions.

5.6 Committees shall report regularly to the Board.

5.7 A collective investment scheme which constitutes a “public interest entity” within the meaning of, and does not come within an exemption in, the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 is obliged to establish an audit committee in accordance with the criteria set out therein ²⁶.

²⁶ Regulation 91 of European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (SI 220 of 2010)

DELEGATES

1.0 General

1.1 The Board may delegate all or part of the management of a collective investment scheme to third parties e.g. investment management, administration, distribution etc. In addition the Board shall appoint a third party trustee / custodian to safe-keep the assets of the collective investment scheme (which together with third party delegates shall be referred to as “delegate service providers”).

1.2 Where the Board delegates all or part of the management of a collective investment scheme and/or appoints a third party trustee / custodian to safe-keep the assets of the collective investment scheme, the Board shall have mechanisms in place for monitoring the exercise of such delegated functions. The Board cannot abrogate its responsibility for functions delegated.

2.0 Delegate Service Providers:

2.1 The collective investment scheme’s delegate service providers shall be appointed in accordance with the requirements of the Financial Regulator and pursuant to agreements evidencing all delegated authorities given to them.

2.2 The Board shall be responsible for the appointment of the delegate service providers.

3.0 Monitoring of Performance

3.1 The Board shall be responsible for monitoring the performance of its delegate service providers including, inter alia, the monitoring of investment performance.

3.2 The Board shall receive reports on a regular basis, and at least at each quarterly board meeting, from each of its delegate service providers which will enable the Board to assess performance of the delegate service providers and the applicable collective investment scheme.

AUDIT FUNCTION

1.0 Monitoring of Internal Control Procedures

1.1 The Board shall ensure that internal control procedures are monitored to ensure they are effective. In doing so, the Board may rely on the internal audit functions of service providers provided they are of a level which the Board is satisfied will give an appropriate level of assurance relative to the service providers' role and involvement in the operational functions of the collective investment scheme or management company (whichever is applicable)²⁷.

2.0 External Audit

2.1 The Board is responsible for keeping proper books of account, which disclose with reasonable accuracy at any time the financial position of the collective investment scheme and to enable it to ensure that the financial statements comply with the Companies Acts.

2.2 The Board shall ensure that all relevant accounting records are properly maintained and are readily available, including production of annual financial statements and, where applicable, half-yearly financial statements²⁸.

2.3 The Board shall ensure that the accounting information given in the annual report of a collective investment scheme is audited by one or more persons empowered to audit accounts in accordance with the Companies Acts and ensure that the auditor's report to shareholders, including any qualifications, is reproduced in full in the annual report²⁹.

2.4 The Board shall be responsible for preparing the annual audited financial statements prior to the shareholders being requested to adopt same.

2.5 In preparing the annual financial statements, the Board is required to:

- (a) select suitable accounting policies and apply them consistently;
- (b) make judgements and estimates that are reasonable and prudent; and
- (c) prepare the financial statements on a going concern basis unless it is appropriate to presume that the collective investment scheme will not continue in business.

2.6 The Board is responsible for preparing a Directors' Report which is required annually in connection with the annual financial statements and which must comply with the requirements of the Companies Acts.

2.7 The Board shall ensure that the annual and half-yearly report (if any) of a collective investment scheme is published within the following time-limits, with effect from the ends of the periods to

²⁷ Section 6 (d)(vi) of the Financial Regulator's Guidance Note 4/07 – UCITS / Organisation of Management Companies

²⁸ UCITS Notice 8.2 Section 1 / Non-UCITS Notice 11.8 Section 1

²⁹ UCITS Notice 8.2 Section 1 / Non-UCITS Notice 11.8 Section 1

which they relate or such other time-limits as may be permitted by the Financial Regulator on a case-by-case basis and notified to shareholders of the collective investment scheme:

- (a) four months in the case of the annual report
- (b) two months in the case of the half-yearly report³⁰.

2.8 The Board shall ensure that the annual report and half-yearly report (if any) of a collective investment scheme contains the information outlined in the Financial Regulator's Notices³¹.

2.9 The Board shall ensure that the annual and half-yearly reports (if any) of a collective investment scheme are sent to the Financial Regulator³².

2.10 The Board shall ensure that the latest annual report and any subsequent half-yearly report of a collective investment scheme are made available to the public at the places specified in the prospectus,³³ are offered to investors free of charge before the conclusion of a contract³⁴ and supplied to shareholders free of charge on request³⁵.

2.11 The Board shall notify the Financial Regulator in advance, of any proposed change of auditor, and of the reasons for the proposed change³⁶.

³⁰ UCITS Notice 8.2 Section 2 / Non-UCITS Notice 11.8 Section 2

³¹ UCITS Notice 8.2 Section 3 / Non-UCITS Notice 11.8 Section 3

³² UCITS Notice 8.2 Section 4 / Non-UCITS Notice 11.8 Section 4

³³ UCITS Notice 8.2 Section 6 / Non-UCITS Notice 11.8 Section 6

³⁴ UCITS Notice 8.2 Section 5 / Non-UCITS Notice 11.8 Section 5

³⁵ UCITS Notice 8.2 Section 7 / Non-UCITS Notice 11.8 Section 7

³⁶ UCITS Notice 2.4 Sections 13 and 39

COMPLIANCE FUNCTION

1.0 Compliance

1.1 The Board is responsible for compliance with legislation and applicable regulatory requirements and for compliance with provisions of the prospectus and constitutional documents of the applicable collective investment scheme. The Board may delegate the monitoring of the compliance function but the Board cannot abrogate its responsibility for the compliance function.

1.2 The Board shall ensure that appropriate internal control mechanisms are in place in order that the collective investment scheme is in a position to satisfy the Financial Regulator's supervisory and reporting requirements and to comply with applicable laws and regulations³⁷.

1.3 The Board shall require direct and immediate reporting of compliance issues from delegate service providers and from any person appointed to monitor the compliance function, where such compliance issues are considered material by the Board.

1.4 The Board shall receive on a regular basis, and at least at each quarterly board meeting, a compliance report from any person appointed to monitor the compliance function.

³⁷ UCITS Notice 2.4, Section 36 / Regulations 17D(2)(a) and 36E(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 as amended

RISK MANAGEMENT FUNCTION

1.0 Identification, Monitoring and Management of Risks

1.1 The Board shall be responsible for ensuring that all applicable risks pertaining to the collective investment scheme (including inter alia risks relating to the use of derivatives and /or other investments, general risks such as static security prices, stock reconciliation, failed trades, market timing, late trading etc and all operational risks pertinent to the collective investment scheme) can be identified, monitored and managed at all times³⁸.

1.2 The Board shall ensure the risks applicable to investing in the collective investment scheme are identified and described in a comprehensive manner in the prospectus of the collective investment scheme³⁹.

1.3 The Board shall ensure that there are appropriate processes and systems in place to monitor and manage risks identified by the Board or its delegates at all times.

1.4 The Board shall ensure that it receives regular reports from applicable delegate service providers in relation to the risks identified in order that they can be monitored and managed on an ongoing basis.

1.5 The Board shall ensure that it is notified promptly by applicable delegate service providers of any breaches in risk limits as determined by the Board in order that immediate action can be taken.

2.0 Internal Control

2.1 The Board shall ensure that appropriate internal control mechanisms are in place in order that the collective investment scheme is in a position to identify, monitor and manage risks which it is exposed to⁴⁰.

2.2 The Board shall ensure that there are sound administrative and accounting procedures in place⁴¹.

2.3 The Board shall ensure that there are control and safeguard arrangements for electronic data processing⁴².

³⁸ UCITS Notice 2.4, Section 37 / Section 6 (d)(ii) of the Financial Regulator's Guidance Note 4/07 – UCITS / Organisation of Management Companies / Non-UCITS Notice 5.11, Sections 15 and 16

³⁹ UCITS Notice 6.4, Section 12(E)(ii) / Non-UCITS Notice 9.7, section 9(5)

⁴⁰ UCITS Notice 2.4, Section 36 / Regulations 17D(2)(a) and 36E(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 as amended

⁴¹ UCITS Notice 2.4, Section 36 / Regulations 17D(2)(a) and 36E(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 as amended

⁴² UCITS Notice 2.4, Sections 43 to 48 / Regulations 17D(2)(a) and 36E(2) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003 as amended/ Non-UCITS Notice 5.11, Section 16